

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Ben's Truck and Equipment, Inc.  
2060 Montgomery Road  
Red Bluff, California 96080

ID No. CAD 055 559 678

Respondent.

Docket HWCA 2007 1438

CONSENT ORDER

Health and Safety Code  
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Ben's Truck and Equipment, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles and/or transports hazardous waste at the following site: 2060 Montgomery Road, Red Bluff, California 96080 (Site).

1.3. Inspection. The Department inspected the Respondent on April 5 and 10, 2007.

1.4. Permit Status. The Department authorized Respondent to transport hazardous waste by Hazardous Waste Transporter Registration # 643, issued on August 31, 2007.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged below. The Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. By agreeing to this Order, the Department does not waive any right to take other enforcement actions

except as specifically provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

## 2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated Health and Safety Code, section 25201, subdivision (a) in that during 2006, on several occasions, Respondent operated as a storage facility without a permit or other grant of authorization from the Department. Specifically, Respondent as a hauler of hazardous waste stored hazardous waste in excess of the ten days allowed under the transfer facility exemption without a permit or other grant of authorization from the Department.

2.1.2. Respondent violated California Code Regulations, title 22, section 66265.31 as referenced by section 66262.34, subsection (a)(4) in that on or about April 5, 2007, Respondent as a generator of hazardous waste failed to maintain and operate its facility/premises (container storage area) in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air or soil which threaten human health and the environment.

2.1.3. Respondent violated California Code Regulations, title 22, section 66265.173, subsection (a) as referenced by section 66262.34, subsection (a)(1)(A) in that on or about April 5, 2007, Respondent failed to keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste. To wit: drums and other containers of hazardous waste were observed open during the walkthrough of the facility.

2.1.4. Respondent violated California Code Regulations, title 22, section 66262.34, subsections (f)(3) and (f)(1) in that on or about April 5, 2007, Respondent failed to label containers of hazardous waste with hazardous waste labels and state its corresponding accumulation start date.

2.1.5. Respondent violated California Code Regulations, title 22, section 66265.35 as referenced by section 66262.34, subsection (a)(4) in that on or about April

5, 2007, Respondent as a generator of hazardous waste failed to maintain aisle space to allow unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency.

2.1.6. Respondent violated California Code Regulations, title 22, section 66266.130, subsection (c)(3), in that on or about April 5, 2007, Respondent failed to label drums containing used oil filters as “drained used oil filters” and show initial date of accumulation.

2.1.7. Respondent violated California Code Regulations, title 22, section 66263.20, subsection (a) in that on or about April 5, 2007, Respondent as a transporter of hazardous waste failed to obtain the hand written signature of the initial transporter and/or the date of acceptance of hazardous waste on some manifests.

2.1.8. Respondent violated California Code Regulations, title 22, section 66262.41, subsection (a) in that on or about April 5, 2007, Respondent as a generator of hazardous waste failed to prepare and submit a single copy of a Biennial report, EPA form 8700-13A/B, 5-80 to the Department by March 1, of each even-number year.

### 3. SCHEDULE FOR COMPLIANCE

3.1. Effective immediately, Respondent shall cease storing hazardous waste without a permit or grant of authorization from the Department and comply with the requirements of Health and Safety Code, section 25201, subdivision (a).

3.2. Effective immediately, Respondent shall comply with the requirements of California Code Regulations, title 22, section 66265.31.

3.3. Effective immediately, Respondent shall comply with the requirements of California Code Regulations, title 22, section 66265.173, subsection (a) as referenced by section 66262.34, subsection (a)(1)(A) by keeping containers closed.

3.4. Effective immediately, Respondent shall comply with the requirements of California Code Regulations, title 22, section 66262.34, subsections (f)(3) and (f)(1).

3.5. Effective immediately, Respondent shall comply with the requirements of California Code Regulations, title 22, section 66265.35.

3.6. Effective immediately, Respondent shall comply with the requirements of California Code Regulations, title 22, sections 66266.130, subsection (c)(3).

3.7. Effective immediately, Respondent shall comply with the requirements of California Code Regulations, title 22, section 66263.20, subsection (a).

3.8. Within 60 days of the effective date of this Order, Respondent shall submit to the Department the Biennial report on 2005 activities as requested to comply with the requirements of California Code Regulations, title 22, section 66262.41, subsection (a).

#### 4. OTHER PROVISIONS

4.1. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

## 5. PENALTY

5.1. Respondent shall pay the Department a total sum of \$14,000.00 as a penalty.

5.2. Payment of the total sum specified in paragraph 5.1 is due within 30 days from the effective date of this Order.

5.3. Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Robert Kou, Unit Chief  
Department of Toxic Substances Control  
9211 Oakdale Avenue  
Chatsworth, California 91311

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

5.5. Respondent hereby agrees to send one of its employees to the California Compliance School, Modules I through IV. Attendance of each and every module must be completed and Respondent must submit a Certification of Satisfactory Completion issued by the California Compliance School to the Department within 365 days of the effective date of this Order. In recognition of this educational investment, the penalty has been reduced by \$5,000 provided the employee satisfactorily completes the specified modules and the Department receives the Certificate of Satisfactory

Completion within 365 days of the effective date of this Order. If Respondent fails to submit the Certificate of Satisfactory Completion as required, the penalty of \$5,000 become due and payable within 30 days after the 365 days period expires. Once the \$5,000 reduction is removed for the reason stated above, the total penalty due and owing to the Department is \$19,000. The 365-day period may be extended by the Department Branch Chief upon a written request demonstrating good cause from the Respondent.

#### 6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: 2-14-08

Original signed by Ben Sale  
Respondent Signature

Ben Sale  
Print Name of Respondent

Dated: 2-26-08

Original signed by Robert Kou  
Robert Kou, Unit Chief  
Glendale Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control